

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

MICHAEL KIENITZ,

Plaintiff,

v.

Case No. 12-CV-464

SCONNIE NATION LLC, and UNDERGROUND
PRINTING – WISCONSIN, L.L.C.,

Defendants.

COMPLAINT

The plaintiff, Michael Kienitz, alleges the following against the defendants, Sconnie Nation LLC, (“Sconnie Nation”), and Underground Printing – Wisconsin, L.L.C., (“Underground Printing”):

Introduction

1. This is an action for copyright infringement, arising from the defendants’ copying of Kienitz’s photograph, the *Official Portrait of Mayor Paul Soglin*, on t-shirts and tank tops that they manufactured, promoted, sold in connection with the 2012 Mifflin Street Block Party in Madison, Wisconsin. The plaintiff, Michael Kienitz, is a well-known photographer, and is the author and owner of the copyright in the *Official Portrait of Mayor Paul Soglin*.

2. Defendants, Sconnie Nation and its printer, Underground Printing, sell novelty t-shirts and other apparel through their retail store on State Street in Madison, Wisconsin, and through websites, such as www.sconnie.com and www.brentfavre.com. Sconnie Nation’s business model is premised in large part on the use of photographs of athletes and celebrities,

and other images taken or copied from other sources, for use on its apparel and in promotional activities.

3. In connection with the 2012 Mifflin Street Block Party, Sconnie Nation and Underground Printing prepared and sold t-shirts and tank tops featuring an image of Mayor Paul Soglin and the text “Sorry for Partying.” The image of Mayor Soglin on the shirts is a high-contrast copy of Kienitz’s *Official Portrait of Mayor Paul Soglin*, which appears to be copied directly from Kienitz’s photo. The defendants’ use of Kienitz’s photograph constitutes an infringement of his copyright, and is not a fair use. Kienitz seeks damages and injunction against Sconnie Nation and Underground Printing as a remedy for their infringement.

The Parties

4. The plaintiff, Michael Kienitz, is a resident of Madison, Wisconsin.

5. Defendant, Sconnie Nation, is a Wisconsin limited liability company, having its principal office at 614 W. Doty Street, #310, Madison, Wisconsin 53703.

6. Sconnie Nation is a retailer of novelty t-shirts and other apparel that operates a retail store at 521 State Street, Madison, Wisconsin, and also sells products through websites, including www.sconnie.com and www.brentfavre.com. Sconnie Nation’s business model is premised in large part on the use of photographs of athletes and celebrities, and other images taken or copied from other sources, for use on its apparel and in promotional activities.

7. Defendant, Underground Printing, is a Wisconsin limited liability company that also operates out of the retail store at 521 State Street, Madison, Wisconsin, and has its principal office at 260 Metty Drive, Suite G, Ann Arbor, Michigan 48103.

8. On information and belief, Underground Printing is the exclusive screen printer of Sconnie Nation’s apparel, and also sells apparel on several websites, including www.wiscrelic.com and www.feelinsoftlylikeacheesehead.com.

Jurisdiction and Venue

9. This is a civil action for copyright infringement arising under the laws of the United States, 17 U.S.C. § 101, et seq. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

10. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(a), because, among other reasons, the defendants are subject to personal jurisdiction here. Defendant, Sconnie Nation, resides in this district pursuant to 28 U.S.C. § 1391(c), and a substantial part of the events giving rise to the claim in this action occurred in this judicial district.

11. Defendants Sconnie Nation and Underground Printing are both subject to personal jurisdiction in this district pursuant to Wis. Stat. § 801.05(1)(d) because they are engaged in substantial and not isolated activities within this state.

12. Defendants Sconnie Nation and Underground Printing are also subject to personal jurisdiction in this district pursuant to Wis. Stat § 801.05(3) because this is an action claiming injury within Wisconsin arising out of the defendants' acts of copyright infringement in Wisconsin.

13. The exercise of personal jurisdiction over the defendants is consistent with the Due Process Clause of the U.S. Constitution.

Factual Background

14. On April 19, 2011, Michael Kienitz took a photograph that was chosen to become the official portrait of Madison Mayor Paul Soglin. A copy of this photograph, the *Official Portrait of Mayor Paul Soglin*, is attached as **Exhibit A**.

15. Kienitz's *Official Portrait of Mayor Paul Soglin* is the subject of U.S. copyright registration No. VA 1-812-155, effective May 1, 2012. A copy of the registration certificate is attached as **Exhibit B**.

16. The *Official Portrait of Mayor Paul Soglin* was published on the City of Madison Website at www.cityofmadison.com/mayor/ on April 26, 2011.

17. The lower right-hand corner of the photograph on the City of Madison website includes a “photo credit.” If an Internet user hovers his or her mouse over the “photo credit” on the photo on the City of Madison website, a larger notation appears on the photo that states: “Photo Credit: Michael Kienitz.”

18. The use of the photograph as Mayor Soglin’s official portrait is by permission from Kienitz, who retains ownership of the copyright in the photograph.

19. In connection with the 2012 Mifflin Street Block Party, Sconnie Nation and Underground Printing prepared and sold t-shirts and tank tops featuring an image of Mayor Paul Soglin, and the text “Sorry for Partying,” (the “Sorry for Partying” Shirts). A photograph of the “Sorry for Partying” Shirts is attached as **Exhibit C**.

20. The image of Mayor Soglin on the shirts is a high-contrast copy of the *Official Portrait of Mayor Paul Soglin*.

21. On information and belief, Sconnie Nation and Underground Printing knowingly copied the *Official Portrait of Mayor Paul Soglin* directly from the City of Madison website for use on its shirts.

First Cause of Action—Copyright Infringement

22. The allegations in paragraphs 1-21 are incorporated here by reference.

23. Kienitz is the author and owner of a valid copyright in the *Official Portrait of Mayor Paul Soglin*, which is the subject of U.S. copyright registration No. VA 1-812-155, effective May 1, 2012. *See* Exhibit B.

24. Sconnie Nation and Underground Printing have infringed Kienitz's copyright in the *Official Portrait of Mayor Paul Soglin*, by manufacturing, promoting, and selling the "Sorry for Partying" Shirts.

25. Sconnie Nation and Underground Printing had access to a copy of the *Official Portrait of Mayor Paul Soglin* on the City of Madison website.

26. The image of Mayor Soglin on the "Sorry for Partying" Shirts is substantially similar to, and is indeed a copy of, the *Official Portrait of Mayor Paul Soglin*.

27. Kienitz's photo credit on the *Official Portrait of Mayor Paul Soglin* on the City of Madison's website is, and was, readily apparent. Upon information and belief, therefore, Sconnie Nation and Underground Printing's infringement was willful.

28. Kienitz has been damaged by the defendants' infringement, and the defendants have unjustly profited from it, and in an amount to be determined at trial.

CONCLUSION

WHEREFORE, plaintiff, Michael Kienitz, respectfully requests judgment as follows:

1. Finding that Sconnie Nation and Underground Printing have infringed Kienitz's copyright in the *Official Portrait of Mayor Paul Soglin*;
2. Granting a permanent injunction prohibiting Sconnie Nation, Underground Printing, and those acting in active concert or participation with them from reproducing, copying and selling or distributing their "Sorry for Partying" Shirts or any other items featuring any copy of the *Official Portrait of Mayor Paul Soglin*;
3. Requiring Sconnie Nation and Underground Printing to provide to Kienitz an accounting of all sales and distribution of the "Sorry for Partying" Shirts;

4. Awarding Kienitz his damages from the infringement and any and all profits that the defendants derived from the sales and distribution of the “Sorry for Partying” Shirts, and his costs in this action; and

5. Awarding any such other relief as the Court deems just and equitable.

Dated this 28th day of June, 2012.

s/ Jennifer L. Gregor

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